

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CITIZENS BANK, successor in interest by)	CASE NO. 5:09-cv-87
merger to REPUBLIC BANK, f/k/a)	
REPUBLIC SAVINGS BANK)	JUDGE SARA LIOI
)	
Plaintiff,)	MAGISTRATE JUDGE LIMBERT
)	
v.)	
)	
AURORA ROAD DEVELOPMENT, LLC,)	
et al.,)	
)	
Defendants.)	

CONSENT JUDGMENT ENTRY AND DECREE OF FORECLOSURE

This cause was submitted to the Court on the Complaint (the “Complaint”) of Plaintiff Citizens Bank, successor in interest by merger to Republic Bank, f/k/a Republic Savings Bank (“Plaintiff”), the Answer of defendant Summit County Fiscal Officer (named in the Complaint as defendant Summit County Treasurer) (the “Fiscal Officer”) (Docket # 8), the Answer of defendant Summit County Clerk of Courts (Docket # 9), the Answer of defendant Aurora Road Development, LLC (“Aurora”) (Docket # 12), the evidence, and the stipulations of the parties as set forth herein.

The real property that is the subject of this foreclosure action is as follows (the “Property”):

3400 East Aurora Road, Twinsburg, Ohio (Permanent Parcel Numbers 64-01553 and 64-01387 (see Legal Description attached hereto as **Exhibit “A”**)).

The Court finds that all necessary parties have been served with summons according to law and are properly before the Court.

The Court finds that defendant Summit County Clerk of Courts has filed an answer claiming an interest in the Property. The Court finds that such interest is inferior and junior in priority to the interest held by Plaintiff. Such interest shall transfer to the proceeds of the sale of the Property, and all defendants that have filed an answer claiming an interest in the Property shall have the right to seek payment from the proceeds of the sale of the Property. Such interests shall be released from the title to the Property upon confirmation of the sale to ensure that the buyer obtains title to the Property free and clear of all interests. The Court makes no finding at this time as to the respective rights, title, interests or liens of said defendants as set forth in their pleadings, except as set forth herein.

The Court finds that Plaintiff and Aurora entered into a certain Loan Agreement on June 30, 2004, pursuant to which Plaintiff agreed to lend Aurora the sum of \$1,400,00.00, as set forth therein (the "Loan Agreement"). A true and accurate copy of the Loan Agreement is attached to the Complaint as Exhibit "A."

The Court finds that Aurora executed and delivered to Plaintiff the Note referenced in and attached as Exhibit "B" to Plaintiff's Complaint (the "Note") and promised, among other things, to make monthly payments on or before the date such payments were due. The Court finds that Aurora has failed to pay in accordance with the terms of the Note and is, therefore, in default. The Court finds that Plaintiff is the owner and holder of the Note, and that the sums due under the Note were accelerated in accordance with the terms of the Note and the Mortgage.

The Court finds that there is due the Plaintiff on the Note, the principal sum of \$1,194,858.99, plus interest at a variable rate, per annum, equal to the Prime Rate as published in the Wall Street Journal plus 1.50% from and after December 10, 2008. The Court further finds that there is due on the Note all late charges imposed under the Note, all advances made for the payment

of real estate taxes and assessments and insurance premiums, and all costs, expenses, and attorneys' fees incurred by Plaintiff for the enforcement of the Note and the Mortgage, except to the extent the payment of one or more of such items is prohibited by Ohio law.

The Court finds that to secure payment of the Note, Aurora executed and delivered a certain mortgage, as referenced in and attached as Exhibit "C" to Plaintiff's Complaint (the "Mortgage"), thereby conveying the Property to Plaintiff.

The Court finds that the Mortgage was duly recorded and filed for record on July 9, 2004, as Summit County Recorder's Document No. 55072514, and thereby became and is a valid first mortgage lien on the Property subject only to the lien of the Fiscal Officer for taxes; that the conditions in the Mortgage have been broken and the same has become absolute; and that, as a result, Plaintiff is entitled to have the equity of redemption and dower of all defendants in and to the Property foreclosed.

The Court finds that Plaintiff is the owner and holder of the Mortgage, and that the Mortgage secures the amounts due under the Note. The Court also finds that there is or may be due Plaintiff sums advanced by it under the terms of the Note and Mortgage to pay real estate taxes, hazard insurance premiums, and property protection, the total amount of which is undetermined at the present time, but which amount will be ascertainable at the time of the sale, which amount may be added to the first mortgage lien of the Plaintiff. The Court reserves for further order a determination of the exact amount due Plaintiff for said advances.

The Court finds that there is due John A. Donofrio, Fiscal Officer of Summit County, taxes, accrued taxes, assessments, and penalties on the Property described herein, as shown on the Fiscal Officer's tax duplicate, the exact amount being unascertainable at this time, but which

amount will be ascertainable at the time of the sale of said Property, which are a valid and subsisting first lien on the Property.

The Court further finds that there is no just cause for delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of Plaintiff and against Aurora, in the amount of \$1,194,858.99, plus interest at a variable rate, per annum, equal to the Prime Rate as published in the Wall Street Journal plus 1.50% from and after December 10, 2008, plus late charges, costs, expenses, and reasonable attorneys' fees in an amount to be determined by further order.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that unless the sums found to be due to Plaintiff, together with the costs of this action, including the cost of the Preliminary Judicial Reports filed herein for which Plaintiff is entitled to reimbursement, be fully paid within ten (10) days from the date of the entry of this Decree, the equity of redemption and the dower of all defendants in the Property described above will be foreclosed and the Property shall be sold free of the interest of all parties to this action subject to redemption by the borrower pursuant to Ohio Revised Code § 2329.33. In addition, an order of sale shall issue to the Master Commissioner, directing him to appraise, advertise and sell the Property according to the law and the orders of this Court and to report his proceedings to this Court. Notice of the time and place of the sale of the Property shall be given to all persons who have an interest in the Property according to the provisions of Ohio Revised Code § 2329.26.

Subject to further order of this Court in the Order of Confirmation of Sale and Distribution, the proceeds of the sale of the Property shall be paid as follows:

1. To the Clerk of Courts the costs herein, including the sum of \$4,385.00, payable to Plaintiff's attorneys, Meyers, Roman, Friedberg & Lewis IOLTA, for the judicial reports filed herein, which is hereby taxed as costs;

2. To John A. Donofrio, Fiscal Officer of Summit County, taxes, accrued taxes, assessments, and penalties on the Property payable under Ohio Revised Code § 323.47 as set forth herein;

3. To Plaintiff, the sum of \$1,194,858.99, plus interest at a variable rate, per annum, equal to the Prime Rate as published in the Wall Street Journal plus 1.50% from and after December 10, 2008, the exact amount of which is yet to be determined;

4. To Plaintiff, sums advanced for real estate taxes, hazard insurance and property protection, and Plaintiff's attorneys' fees in an amount yet to be determined;

6. To the Summit County Clerk of Courts, the sum of \$58.86, plus interest and costs, the exact amount of which is yet to be determined; and

7. The balance, if any, to be held by the Court pending further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the distribution of the proceeds of sale pursuant to the Order of Confirmation of Sale and Distribution, a certified copy of the Order shall be issued to the Summit County Fiscal Office and Clerk of Courts directing them to enter the same on the margin of the records of the mortgages and liens, releasing the liens adjudicated herein from the Property.

IT IS SO ORDERED.

August 25, 2009
Date


HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE

SUBMITTED AND APPROVED BY:

s/ Stephen D. Dodd

Stephen D. Dodd (0072658)
Meyers, Roman, Friedberg & Lewis
28601 Chagrin Boulevard, Suite 500
Cleveland, Ohio 44122
Phone: (216) 831-0042
Fax: (216) 831-0542
Email: sdodd@meyersroman.com
Attorneys for Plaintiff

s/ Ralph J. Palmisano

Ralph J. Palmisano (0021146)
Nicholas L. Evanchan (0026028)
Evanchan & Palmisano, LLC
One GOJO Plaza, Suite 300
Akron, Ohio 44311
Phone: (330) 208-4520
Fax: (330) 208-4519
Email: rpalmisano@eandplaw.com
nevanchan@eandplaw.com
Attorneys for Defendant
Aurora Road Development, LLC

s/ Milton C. Rankins

Milton C. Rankins (0051933)
Assistant Prosecuting Attorney
220 S. Balch Street, Suite 118
Akron, Ohio 44302
Phone: (330) 643-2617
Fax: (330)
Email: mranks@summitoh.net
Attorneys for Defendants Summit County
Fiscal Officer and Clerk of Courts

Schedule A

Parcel 1

Situated in the City of Twinsburg, County of Summit and State of Ohio and known as being part of Twinsburg Township Lot No. 36, Tract 3, and further described as follows:

Beginning at the centerline intersection of Aurora Road (State Route 82) with the Ravenna Road (State Route 14) said beginning point also being in the North line of Lot 36; thence South 87 deg. 49' East along the centerline of Aurora Road and the North line of said lot 36, 498.53 feet; thence South 43 deg. 06' 30" West 326.48 feet, passing over an iron pipe at 39.70 feet to a point in the centerline of Ravenna Road (State Route 14) and passing over an iron pipe 30 feet from the said point; thence North 46 deg. 54' 30" West, 376.77 feet along the centerline of Ravenna Road (State Route 14) to the place of beginning and containing 1.4116 acres of land.

Parcel 2

Situated in the City of Twinsburg, County of Summit and State of Ohio and known as being a part of Lot No. 36, Tract No. 3, formerly in Twinsburg Township, and more fully described as follows:

Beginning at a point in the centerline of Ravenna Road (C.H. 12) (60 feet wide), said beginning point being South 46 deg. 54' 30" East, 376.77 feet as measured along said road centerline from its intersection with the north line of said Lot No. 36 which is also the centerline of Aurora road (S.R. 82) and thence along the Southeasterly line of a parcel of land as deeded to Eleanor G. Mays and recorded in Deed Volume 4007, Page 394, North 43 deg. 05' 30" East, 326.46 feet to the North line of said lot No. 36 and the centerline of said Aurora Road (60 feet wide) (an iron pipe is South 43 deg. 05' 30" West 39.70 feet from this point); thence along said lot line and road center, South 87 deg. 49' East, 208.11 feet to the Southwesterly right-of-way line of the Wheeling and Lake Erie Railroad; thence along said right-of-way, South 46 deg. 24' East, 42.72 feet (an iron pipe is south 46 deg. 24' East, 2.63 feet and another iron pipe is South 43 deg. 05' 30" West, 2.30 feet from this point and both pipes are on the South line of said road and are 3.48 feet apart); thence South 43 deg. 05' 30" West, 462.36 feet to the centerline of said Ravenna Road (an iron pipe is North 43 deg. 05' 30" East, 30.0 feet from this point); thence along said road centerline, North 46 deg. 54' 30" West, 200.0 feet to the place of beginning (an iron pipe is North 43 deg. 05' 30" East, 30.0 feet from this point) and containing 1.878 acres of land as surveyed in July 1969 by Gehres & Kingsley, Surveyors.

3400 East Aurora Road
Twinsburg, Ohio

End of Schedule A

Exhibit "A"